

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 24-14097-CIV-CANNON

ALFRED WHITTON, and
MARJORIE WHITTON, his wife,

Plaintiffs,

vs

KEITH PEARSON, SHERIFF OF
ST. LUCIE COUNTY,

Defendant,

**SECOND AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR TRIAL BY
JURY**

COME NOW the Plaintiffs, ALFRED WHITTON and MARJORIE WHITTON, his wife,
by and through their undersigned attorney, and sue the Defendant, KEITH PEARSON, SHERIFF
OF ST. LUCIE COUNTY, and allege:

GENERAL ALLEGATIONS

1. That this is an action for damages in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00).
2. That at all times pertinent to this action, the Plaintiffs, ALFRED WHITTON and MARJORIE WHITTON, were residents of Indiantown, Martin County, Florida.
3. That the cause of action alleged herein accrued in Fort Pierce, St Lucie County, Florida.
4. That at all times pertinent to this action, the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, acted on behalf of the St. Lucie County Sheriff's Office, an agency, organized and conducting its activities in the State of Florida and County of St. Lucie, authorized to make contracts, sue and be sued.

5. That at all times pertinent to this action, the Deputies, CORTNEY L. HOYT, and MARK ACEVEDO, acted individually and on behalf of the St. Lucie County Sheriff's Office, an agency, organized and conducting its activities in the State of Florida and County of St. Lucie, authorized to make contracts, sue and be sued.

6. That on or about May 31, 2023, pursuant to F.S. 768.28(6)(a), Plaintiffs notified Sheriff KEITH PEARSON, St. Lucie County Sheriff's Office by Certified Mail, Return Receipt No. 70190700000212317507, St. Lucie County Board of County Commissioners by Certified Mail, Return Receipt No. 70190700000212327521, Mayor Shannon M. Martin, Port St. Lucie Mayor's Office, Return Receipt No. 70190700000212320019 and the State of Florida, Division of Financial Services by Certified Mail, Return Receipt No. 70190700000212317750 of the possibility of litigation to recover damages stemming from the concerned accident (a copy of said letters are attached hereto and made a part hereof as Exhibit "A").

7. That six (6) months has lapsed since this notification, and the requirements of Florida Statutes, Section 768.28 have been met for the purposes of this action. Pursuant to the above Statute, the claim has either been affirmatively denied or deemed denied.

8. That on or about June 13, 2022, the Plaintiff, ALFRED WHITTON, owned and was operating a dump truck license plate number P9398A, and was transporting truck loads of dirt to and from the concerned construction site located at or near 5040 West Virginia Drive, Ft. Pierce, Florida.

9. Throughout the course of the day, he made numerous trips back and forth loading and unloading dirt from the construction site.

10. At the end of the day, at approximately 6:00 pm, Plaintiff, ALFRED WHITTON, was driving the dump truck, with a full load, when the rear tire completely came off, causing damage amongst other things, to the rear tire axle. Plaintiff, ALFRED WHITTON, immediately pulled over

near the vicinity of Edwards Road in Ft. Pierce, Florida.

11. Police came to the scene and told Plaintiff, ALFRED WHITTON, he had to move the dump truck. MR. WHITTON thereafter contacted the "Tire Man" who came and "temporarily fixed" the problem by replacing the lug nuts and installed the tire back on the concerned dump truck.

12. Plaintiff, ALFRED WHITTON, was advised by the "Tire Man" that it was not safe to drive the dump truck with the full load, and that he should take the load back to where he picked it up and the tire axle would be fixed in the morning.

13. Plaintiff, ALFRED WHITTON, did exactly what he was advised to do, and returned to the construction site where he had originally picked up the dirt (Midway Road) which was approximately one (1) mile away. Significant time had passed.

14. At approximately 11:30 pm, Plaintiff, ALFRED WHITTON, returned to the concerned construction site where he had picked up the load on his dump truck, dumped the load, parked the dump truck and was waiting to be picked up by his wife, Plaintiff, MARJORIE WHITTON.

15. While sitting outside on the step of his dump truck talking to his wife on the phone, Plaintiff, ALFRED WHITTON, heard someone yell "Get out of the Truck and come towards me", and was blinded by flashing lights and lights pointed at him. Plaintiff, ALFRED WHITTON, was not armed, nor did the call suggest that he was armed or dangerous in any way.

16. Plaintiff, ALFRED WHITTON, complied and exited the dump truck. A female Officer yelled to walk backwards toward her. Plaintiff, ALFRED WHITTON, is a seventy-five (75) year old man and the terrain in the area was a rocky construction road making it difficult for him to do, so he slowly walked forward trying to explain to the Officer that he was not able to walk backwards. Plaintiff, ALFRED WHITTON additionally has a strong Jamaican accent.

17. Plaintiff, ALFRED WHITTON, was immediately jumped by Deputies, CORTNEY L. HOYT, and MARK ACEVEDO who placed him in a "hammerlock hold". Thereafter a "hammerlock takedown" was used to slam him down to the floor, causing serious injuries to MR. WHITTON. Lastly, a "spear leg lock" was used while they placed him in handcuffs.

18. At all times material hereto, Plaintiff, ALFRED WHITTON, was not in the commission of any crime and never attempted to flee or resist arrest.

19. None of the named individual Defendants nor the bystander deputy sheriffs were properly trained and/or followed proper policy as to how to deal with or conduct themselves when approaching a suspect that was not accused of a crime, or suspected of any crime, nor were the bystanders properly trained and/or did not follow proper policy on how and when to intervene to stop the use of excessive force.

20. Certain training programs and instruction that were afforded were not properly implemented requiring other deputies to intervene if there was the use of excessive force by other law enforcement or corrections deputies.

21. The assault and/or battery on Plaintiff, ALFRED WHITTON, caused both physical and long-lasting psychological injuries.

22. Due to use of this negligent and excessive force, Plaintiff, ALFRED WHITTON, was injured and immediately complained about knee pain at the scene to the deputies.

23. That as a direct and proximate result of the carelessness, recklessness and negligence of the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, by and through its authorized agents/employees HOYT and ACEVEDO, Plaintiff, ALFRED WHITTON, was injured in and about his body and extremities and/or aggravated a pre-existing condition or injury, suffered pain therefrom, incurred medical and related expenses in the treatment of his injuries, suffered

mental and physical pain and anguish, sustained a permanent injury within a reasonable degree of medical probability and/or permanent loss of bodily function and loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, future medical care, loss of earnings, loss of ability to earn money. The losses are either permanent or continuing and the Plaintiff, ALFRED WHITTON, will suffer the losses in the future.

COUNT 1
COMMON LAW NEGLIGENCE TRAINING OR INSTRUCTION- KEITH PEARSON,
SHERIFF OF ST. LUCIE COUNTY

Plaintiff, ALFRED WHITTON re-alleges the allegations set forth in paragraphs 1 through 23 as if fully set forth herein.

24. Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, owed a duty to the Plaintiff, ALFRED WHITTON to properly train, instruct, oversee and/or manage its deputy sheriffs and police officers to ensure that they adequately, reasonably, and responsibly performed their duties not to harm or abuse the public, including the commission of battery and the application of excessive force, including detainees, and to affirmatively intervene when deputy sheriffs are using excessive force.

25. Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, breached this duty in its implementation of policy by failing to properly train, instruct, oversee and/or manage its deputy sheriffs and police officers to ensure that they adequately, reasonably and responsibly performed their duties not to harm or abuse the public, including the commission of battery and the application of excessive force and to affirmatively intervene when deputy sheriffs are using excessive force.

26. KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, through HOYT and ACEVEDO and its other authorized agents, failed to comply with policies and procedures on how

to conduct themselves when approaching a suspect that was not accused of a crime, or suspected of any crime and the failure to intervene when another is using excessive force given the opportunity.

27. Had these policies been implemented properly the Plaintiff, ALFRED WHITTON, would not have been the victim of this excessive force.

28. A special relationship existed at all times material between the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, and Plaintiff, ALFRED WHITTON because Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, created a foreseeable zone of risk to the Plaintiff, ALFRED WHITTON.

29. As a direct and proximate result thereof Plaintiff, ALFRED WHITTON suffered physical and emotional distress and abuse resulting in physical and emotional injuries and damages; incurred medical, psychological, and other expenses, suffered shame, humiliation, embarrassment, mental pain and suffering, mental anguish, the inability to lead a normal life, loss of capacity for the enjoyment of life and other damages.

WHEREFORE, ALFRED WHITTON demands judgment for damages against Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY and trial by jury on all issues so triable.

COUNT II

VICARIOUS LIABILITY FOR ASSAULT AND BATTERY Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY

Plaintiff, ALFRED WHITTON re-alleges the allegations set forth in paragraphs 1 through 23 and 24-29 as if fully set forth herein.

30. Deputies, CORTNEY L. HOYT, and MARK ACEVEDO, acting as an agent(s)/employee(s) for the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, within the course and scope of their employment, and/or in furtherance of a purpose or interest of that employment, did assault and/or batter by intentionally, unlawfully offering corporal injury by

force, or exertion of force directed towards, Plaintiff, ALFRED WHITTON under circumstances that created a reasonable fear of imminent peril.

31. Deputies, CORTNEY L. HOYT, and MARK ACEVEDO, as agent(s)/employee(s) for Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, committed the affirmative act of threatening to use force and/or the actual exertion of force upon Plaintiff, ALFRED WHITTON.

32. As a direct and proximate result of the foregoing, Plaintiff, ALFRED WHITTON, sustained severe and permanent personal injuries. As a further result of the foregoing, Plaintiff, ALFRED WHITTON sustained bodily injury, resulting pain and suffering, disability, physical impairment, disfigurement, psychological trauma, mental anguish, inconvenience and loss of capacity for the enjoyment of life, experienced in the past, and to be experienced in the future. Alternatively, Plaintiff, ALFRED WHITTON sustained an aggravation of an existing disease or mental or physical defect, activation of a latent condition. Additionally, Plaintiff, ALFRED WHITTON has sustained a reasonable value or expense of hospitalization, and medical and nursing care and treatment in the past and to be so obtained in the future. Additionally, Plaintiff, ALFRED WHITTON has sustained a loss of earnings and a loss of ability to earn money in the past and in the future. All of the above damages are continuing and/or permanent in nature.

WHEREFORE, Plaintiff, ALFRED WHITTON, demands judgment for damages against Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY and demands trial by jury.

COUNT III
LOSS OF CONSORTIUM - KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY

The Plaintiff, MARJORIE WHITTON, re-alleges the allegations set forth in paragraphs 1 through 23 and 24-29 as if fully set forth herein.

33. That at all times material hereto, the Plaintiff, MARJORIE WHITTON, was, and is, the spouse of the Plaintiff, ALFRED WHITTON.

34. As a direct and proximate result of the afore-described negligence of the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, MARJORIE WHITTON, has in the past, and will in the future, be denied the services, comfort, society and attention of her husband, Plaintiff, ALFRED WHITTON.

WHEREFORE, the Plaintiff, MARJORIE WHITTON, demands judgment for damages against the Defendant, KEITH PEARSON, SHERIFF OF ST. LUCIE COUNTY, and demands a trial by jury on all issues so triable.

DEMAND FOR JURY TRIAL

Plaintiffs, ALFRED WHITTON, and MARJORIE WHITTON, demand a trial by jury with respect to all issues, counts, claims, controversies, and damages allowable as a matter of right before a jury.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Portal to Christy M. Imparato, Esq., Purdy, Jolly, Giuffreda, Barranco & Jisa, P.A., 2455 E. Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL 33304 at Christy@purdylaw.com; and Patty@purdylaw.com this 8th day of May, 2024.

RETAMAR & MILLIAN, P.A.

685 East Hillsboro Boulevard
Deerfield Beach, FL 33441

Phone: (954) 834-0404

Facsimile: (954) 834-0405

retamar@retamarmillian.com

picciano@retamarmillian.com

BY:



RICHARD E. RETAMAR, ESQ.

Florida Bar Number: 0856967



RETAMAR & MILLIAN, P.A.

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
MARTINDALE-HUBBELL AV RATED

RICHARD B. RETAMAR, ESQ. *
MARC T. MILLIAN, ESQ.
RICHARD C. MILLIAN, ESQ.

* CERTIFIED CIRCUIT CIVIL MEDIATOR
* CERTIFIED COUNTY COURT MEDIATOR

REPLY TO:
DEERFIELD BEACH OFFICE

SHARI PICCIANO, PARALEGAL
SANDY DE LA CRUZ, PARALEGAL
DELFINA CARRIZO, PARALEGAL
ALYSON RHODES, PARALEGAL

May 31, 2023

State of Florida
Department of Financial Services
200 East Gaines Street
Tallahassee, FL 32399-0300
Sent Via Certified Mail
Return Receipt Requested
7019 0700 0002 1231 7750

Sheriff Ken Mascara
St. Lucie County Sheriff's Office
4700 W. Midway Road
Fort Pierce, FL 34981
Sent Via Certified Mail
Return Receipt Requested
7019 0700 0002 1231 7507

St. Lucie County Board of County Commissioners
2300 Virginia Avenue
Fort Pierce, FL 34982
Sent Via Certified Mail
Return Receipt Requested
7019 0700 0002 1232 7521

Mayor Shannon M. Martin
Port St. Lucie Mayor's Office
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Sent Via Certified Mail
Return Receipt Requested
7019 0700 0002 1232 0019

WRITTEN CLAIM PURSUANT TO FLA. STAT. §768.28

RE: **Alfred A. Whitton and Marjorie Whitton v. County of St. Lucie**
Date of Accident: June 13, 2022

To Whom it May Concern:

In accordance with Florida Statute §768.28(6)(a), you are advised that the undersigned has been retained by Alfred A. Whitton and Marjorie Whitton for all claims and damages as set forth herein against the following:

STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES
ST. LUCIE COUNTY SHERIFF'S OFFICE
ST. LUCIE COUNTY BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY MAYOR SHANNON M. MARTIN

In further accordance with Florida Statute §768.28(6)(a), there exists no prior adjudicated unpaid claims in excess of Two Hundred Dollars and 00/100, (\$200.00), in this matter. In furtherance of said Florida Statute §768.28(6)(a), the following information is provided in accordance with same:

Claimant : **Alfred A. Whitton**
Date of Birth: **06/04/48**

DEERFIELD BEACH

685 EAST HILLSBORO BLVD.
DEERFIELD BEACH, FL 33441

TEL: 854-834-0404
FAX: 854-834-0405

WWW.RETAMARMILLIAN.COM

TEL: 561-391-2373
FAX: 561-417-9972

2925 Alt 19 N, Suite B
Palm Harbor, FL 34683

PALM HARBOR

TEL: 813-200-8894
FAX: 813-333-7374

TEL: 727-233-7356
FAX: 727-674-4656

EXHIBIT "A"

May 31, 2023

Page 2

Place of Birth:	Jamaica
Social Security Number:	593-77-9802
Marital Status:	Married
Spouse Name:	Marjorie Whitton
Date of Birth:	09/23/48
Place of Birth:	Jamaica
Social Security Number:	593-77-7949
Place of Marriage:	St. Thomas, Jamaica
Case Style:	An action has not been filed yet
Tribunal:	Nineteenth Judicial Circuit Court in and for St. Lucie County
Adjudicated Claims:	None
Claims:	Assault and battery

On June 13, 2022, Alfred A. Whitton was in and about the property located at 5040 West Virginia Drive, Fort Pierce, FL 34981 when he was negligently and wrongfully restrained and assaulted by two St. Lucie County Sheriff Officers causing him to sustain serious injuries. It is our position that Mr. Whitton was improperly restrained for no reason, and in the process of being restrained, was seriously injured.

Marjorie Whitton is the spouse of Alfred A. Whitton and, as such, has a derivative consortium claim as a result of the aforementioned accident.

Naturally, Alfred A. Whitton has incurred past and future medical expenses, mental anguish, emotional distress, pain and suffering among other things. Therefore, Alfred A. Whitton and Marjorie Whitton demand \$200,000.00 to settle their claim against St. Lucie County.

Should you have any questions or concerns, please do not hesitate to contact my office, otherwise thank you for your cooperation in this matter.

Very truly yours,



Richard E. Retamar
retamar@retamarmillian.com

RER:slp

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FORT PIERCE, FL 34981

June 5, 2023, 11:07 am

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 Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

SHERIFF KEN MASCARA
ST. LUCIE CO. SHERIFFS

OFFICE

4700 W. MIDWAY ROAD
FORT PIERCE, FL 34981

9590 9402 5130 9092 8131 71

Track Another Pa

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THE SECTION ON DELIVERY

A. Signature

X

Agent

Addressed

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 if YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Addit Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
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☐ Registered Mail Restricted Delivery
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☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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Delivered, Individual Picked Up at Postal Facility
TALLAHASSEE, FL 32301
June 7, 2023, 8:32 am
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SENDER: COMPLETE THIS SECTION		ADDRESSEE: COMPLETE THIS SECTION (IF DIFFERENT)	
Text & Email	<input checked="" type="checkbox"/> Complete items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X <i>Willis Clark</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
	1. Article Addressed to: STATE OF FLORIDA DEPT. OF FINANCIAL SERVICES 200 E. GAINES STREET TALLAHASSEE, FL 32399-0800	B. Received By: WILLIS CLARK of Delivery DEPARTMENT OF FINANCIAL SERVICES Tallahassee, FL 32399-0800 D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:	
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Delivered

Delivered, Left with Individual



PORT SAINT LUCIE, FL 34984

June 5, 2023, 10:02 am

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Text & Image	<input checked="" type="checkbox"/> Complete items 1, 2, and 3. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature:  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) _____ C. Date of Delivery _____	
	USPS Text & Image 1. Article Addressed to: MAYOR SHANNON M. MARTIN PORT ST. LUCIE MAYOR'S OFFICE 121 SW PORT ST. LUCIE BLVD. PORT ST. LUCIE, FL 34984  9590 9402 5130 9092 8131 57	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: _____	
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<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>ST. LUCIE COUNTY BOARD OF COUNTY COMMISSIONERS 2300 VIRGINIA AVENUE FORT PIERCE, FL 33025</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p> <p>7019 0700 0002 1231 7521</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
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